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January 12, 1994

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FCC MAIL ROOM

Federal Communication Commission
Office of the Secretary
1919 M Street N.W.
Washington, DC 20554

Re: CC Docket 93-292

Dear Commissioners:

Leucadia National Corporation ("Leucadia") and American Investment Bank, NA ("AIB"), as concerned CPE owners and IXC customers, are writing in response to the Federal Communication Commission's (the "Commission") request for public comment regarding the Commission's Notice of Proposed Rule Making concerning toll fraud CC Docket 93-292. You may recall that Leucadia and AIB participated in the Commission's October 9, 1992 en banc hearing on toll fraud as a panelist and as a victim of CPE-based toll fraud. Leucadia and AIB told the Commission about their experience in discovering and attempting to stop the toll fraud being perpetrated on their common communications system.

Leucadia and AIB support the Commission's tentative determination that tariff liability provisions that fail to recognize an obligation by the carrier to warn customers of risk of using carrier services are unreasonable. As Leucadia and AIB explained to the Commission during the en banc hearing, prior to being victimized, Leucadia and AIB were unaware of the risk of toll fraud. Had their carrier been obligated to warn them of the risks of toll fraud, they would have been in a position to learn about and to implement security measures which would have eliminated, or substantially reduced, the likelihood and the extent of toll fraud on their communication system.

With respect to the Commission's determination regarding warnings from carriers, Leucadia and AIB propose that

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the Commission consider a specific requirement that warnings regarding the risks of toll fraud through 800 numbers be communicated to 800 number customers. As the Commission is aware, hackers accessing 800 numbers to reach and manipulate CPEs to allow fraudulent long-distance calling is an enormous problem. Leucadia and AIB support the Commission's tentative determination that carriers have an affirmative duty to ensure that carrier warnings are communicated effectively to customers through such methods as billing inserts, annual notices or other distribution methods.

Leucadia and AIB also support the Commission's decision to consider apportionment of the cost of CPE-based fraud between carriers, CPE owners, equipment manufacturers and vendors. Leucadia and AIB are mindful of Commissioner Barrett's statement that parties seeking only to impose losses on others and to limit their own liability is counterproductive to the Commission's attempts to effectively respond to the toll fraud problem. Leucadia and AIB agree that CPE owners must be responsible to secure their own equipment or communications system and that CPE owners should share under any apportionment of liability for toll fraud costs.

However, Leucadia and AIB believe that CPE owners can take appropriate security measures to prevent or limit toll fraud only after they have been informed of the risks of toll fraud by carriers, equipment manufacturers, and vendors, and only after CPE owners have been educated by manufacturers and vendors about features which may make the equipment or system vulnerable to unauthorized use. CPE owners must also be informed by carriers, manufacturers, and vendors about what technologies are available to lessen the risks of toll fraud. Accordingly, Leucadia and AIB propose that the Commission, in connection with its determination regarding apportionment of liability for toll fraud costs, require carriers, equipment manufacturers, and vendors to inform and educate customers so that customers will have the ability to implement protective and/or mitigating measures. Leucadia and AIB further recommend that the Commission find that a breach of these responsibilities by carriers or manufacturers or vendors precludes apportionment of any significant costs to the CPE owner/IXC customer.

Certainly, with their sophisticated monitoring facilities, carriers are in a superior position to detect and to warn about toll fraud. Leucadia and AIB would support a Commission decision requiring all carriers to monitor trunk lines and to contact customers in the event of unusual activity or patterns which may indicate toll fraud. Indeed, Leucadia and AIB

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have learned that their carrier was in fact aware of a thousand-fold increase in activity on certain Leucadia and AIB lines with calls being placed to Pakistan and the Dominican Republic, locations to which carriers are aware a large number of fraudulent calls are placed. Unfortunately, their carrier claims it was not obligated to nor did it actually inform them of this unusual increase in activity which, it was learned, was fraudulent.

Nor did Leucadia and AIB's equipment vendor inform them about several of the features built into their system, unknown to them, which allowed unauthorized access to the system. Unlike manufactures and vendors, Leucadia and AIB were not in a position to know how system features may allow unauthorized access to the CPE and how such access could be limited and/or detected. Leucadia and AIB support the Commission's proposal to amend Part 68 of the Commission's rules to require equipment manufacturers to provide warnings regarding the potential risks of toll fraud associated with the use of equipment. Leucadia and AIB believe that the language of the proposed amendment is very clear, and they commend the Commission on its efforts.

Leucadia and AIB also support the Commission's proposal in the case of PBX and similar equipment that default codes set by the manufacturer, vendor, or carrier must be fully explained to the customer and, further, that the manufacturer, vendor, or carrier must explain the risks of using the equipment without modifying these default codes. Leucadia and AIB propose that requirements to warn customers about toll fraud be extended to equipment installers and to communication system consultants.

Because carriers are in a superior position to detect and to warn about toll fraud, Leucadia and AIB submit that in any determination regarding apportionment of costs for toll fraud, it is equitable that carriers should bear a majority of toll fraud costs. Similarly, because equipment manufacturers and vendors are in a superior position to know of and to warn about vulnerabilities in equipment and communications systems which may allow unauthorized access, manufacturers and vendors should also bear a significant portion of toll fraud costs.


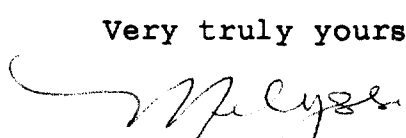
Finally, Leucadia and AIB are deeply concerned that the rules ultimately adopted and implemented regarding carrier tariffs and apportionment of liability will not aid those already victimized by toll fraud. Leucadia and AIB are not suggesting that the Commission has been slow to act on the problem of CPE-based fraud; rather, they are proposing that, in light of the fact that carriers, equipment manufacturers and vendors have all

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been aware of the problem of CPE-based fraud for more than a decade, the Commission consider retroactive application of its decisions regarding carrier tariffs and apportionment of liability for toll fraud costs. Leucadia and AIB believe that carriers, as well as manufacturers and vendors, having been fully aware of the risks of toll fraud, and yet having failed to warn customers, should not now be permitted to avoid liability for toll fraud losses and damages.

Again, Leucadia and AIB commend the Commission on its efforts to achieve solutions to the problem of toll fraud. Leucadia and AIB would be pleased to participate in any other hearings involving CPE-based fraud or to otherwise assist the Commission in the solution-developing process.

Very truly yours,



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Corporation and American Investment
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/mdd

cc: Mr. Thomas E. Mara, Leucadia National Corporation
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